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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 STEWART RIGGS,

8 Plaintiff,

9 v.

10 DEPARTMENT OF CORRECTIONS,
11 OFFICER BAKER, and SGT. JACKSON,

12 Defendants.

No. C11-5627 BHS/KLS

REPORT AND RECOMMENDATION
Noted for: November 4, 2011

13 On September 12, 2011, Plaintiff was granted leave to file an amended complaint on or
14 before October 7, 2011. ECF No. 8. Plaintiff has not responded to the Court's Order. The
15 undersigned recommends that the action be dismissed.

16 **DISCUSSION**

17 In his complaint, Plaintiff alleged that during his transfer from the Washington
18 Corrections Center (WCC) to the Coyote Ridge Corrections Center (CRCC), a dental device
19 valued at \$880.00 that was in his property before he left WCC, was not included in the property
20 that was transported with him to CRCC. ECF No. 1, p. 4. Plaintiff alleged that Plaintiff Baker
21 signed the property inventory slip stating that everything marked on the slip was present and in
22 the property bag. However, Plaintiff Baker placed all of his property in one bag despite a rip and
23 despite Plaintiff's concern that the bag was too small. *Id.* The bag broke open several times
24 during the transport and when it arrived at the CRCC, Plaintiff was given his dental cup, but the
25 device was missing. After a search, St. Jackson told Plaintiff that his property could not be
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1 found and that he should file a tort claim for his loss. *Id.*, p. 5. Plaintiff grieved his loss and
2 filed a tort claim. The tort claim was denied. *Id.*

3 On the basis of these allegations, the Court found that Plaintiff failed to state a viable
4 cause of action under 42 U.S.C. § 1983 because neither the negligent deprivation of property nor
5 the intentional deprivation of property states a claim under Section 1983 provided the
6 deprivation was random and unauthorized. *See Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908,
7 68 L.Ed.2d 420 (1981), *overruled in part of other grds, Daniels v. Williams*, 474 U.S. 327, 330-
8 31, 106 S.Ct. 662, 664, 88 L.Ed.2d 662 (1986) (state employee's negligent loss of prisoner's
9 hobby kit did not state claim); *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393
10 (1984) (intentional destruction of inmate's property did not state claim). The availability of a
11 state tort action to remedy such losses precludes relief under Section 1983 because it provides
12 adequate procedural due process and therefore no constitutional right has been violated. *King v.*
13 *Massarweh*, 782 F.2d 825, 826 (9th Cir.1986).
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16 Under Washington law, prisoners may avail themselves of the DOC grievance process
17 and/or file tort claims against the state for the unlawful loss or destruction of their personal
18 property. *See* RCW 72.02.045 (state and/or state officials may be liable for the negligent or
19 intentional loss of inmate property) and RCW 4.92.090 (state liable for the tortuous conduct of
20 state officials). A prisoner does not have a right to a specific grievance procedure, as long as it is
21 adequate, so that a defendant merely ruling against an inmate's grievance does not contribute to
22 the underlying alleged deprivation. *See Gallaher v. Shelton*, 587 F.3d 1063, 1069 (10th
23 Cir.2009).
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1 Here, Plaintiff alleged that he has availed himself of the prison's grievance procedure and
2 that he had an opportunity to file a tort claim in state court for deprivation of his property.
3 Therefore, he has not stated a claim that is cognizable under 42 U.S.C. § 1983 because a state
4 tort action was available. Even though Plaintiff's tort claim was denied, he was provided
5 adequate due process and therefore, no constitutional right has been violated.

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7 Based on the foregoing, Plaintiff was advised that he had failed to assert denial of a right
8 secured by the Constitution or laws of the United States. Nevertheless, he was given an
9 opportunity to show cause and/or file an amended complaint to cure, if possible, the deficiencies
10 of his complaint. Plaintiff was given until October 7, 2011 to do so and was warned that if he
11 failed to do so or failed to adequately address the issues raised in the Order to Show Cause, the
12 Court would recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915 and
13 the dismissal will count as a "strike" under 28 U.S.C. § 1915(g). ECF No. 9, p. 6.

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15 Plaintiff has not responded to the Court's Order to Show Cause and has not filed an
16 amended complaint. Accordingly, it is recommended that this action be dismissed dismissal of
17 this action as frivolous pursuant to 28 U.S.C. § 1915 and that the dismissal should count as a
18 "strike" under 28 U.S.C. § 1915(g).

19 CONCLUSION

20 Although he was given leave to amend, Plaintiff failed to respond to this Court's order
21 and has failed to file an amended pleading stating a cognizable claim under 42 U.S.C. § 1983.
22 Accordingly, this case should be **dismissed without prejudice and the dismissal counted as a**
23 **"strike" under 28 U.S.C. § 1915(g).**

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25 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
26 Procedure, the parties shall have fourteen (14) days from service of this Report to file written

1 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
2 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the
3 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
4 **November 4, 2011**, as noted in the caption.

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6 **DATED** this 18th day of October, 2011.

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9 Karen L. Strombom
10 United States Magistrate Judge
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